

ATTACHMENT B

PROCEDURE FOR PRE-BID REDUCTION/WAIVER OF MBE/WBE PARTICIPATION GOALS¹

I. Pre-Bid Reduction/Waiver Procedures

A. Affirmative Marketing Participation Goals

Each Municipality (Awarding Authority) must enforce the current Affirmative Marketing Goals developed by the Division of Capital Asset Management (DCAM) in consultation with SDO as follows:

Design Participation: Combined MBE/WBE goal of (17.9%)

Construction Participation: Combined MBE/WBE goal of (10.4%)

The combined goals require a reasonable representation of both MBE and WBE firm participation on the project as further set forth in Attachment C, Section A, Paragraph 2.

B. Criteria for Reduction/Waiver of Goals

Potential Bidders may request a reduction or waiver of goals on a project-by-project basis before bids are submitted. The Awarding Authority reserves the right to accept and review written requests but does not have the authority to grant such requests made by a General Bidder to reduce or waive the MBE or WBE design and construction participation goals established for this contract. In accordance with Section 7 of Chapter 193 of the Acts of 2004, such written requests must demonstrate to the satisfaction of the Awarding Authority that there is no feasible way for a non-MBE or non-WBE General Bidder to meet the goals established for this contract and that a **“Diligent Good Faith Effort”** was made to comply. If this criteria is met the Awarding Authority must submit the General Bidders request to the Executive Director of the Supplier Diversity Office (SDO) for final determination. Factors that may be considered in granting a reduction or waiver of the contract goals include any or all of the following:

- Actual availability of certified Minority- and/or Women-Owned Business Enterprises (MBE/WBEs);
- The geographic location of the project;
- The scope of work and opportunities for subcontracting the work;
- Other relevant factors including documented inability by the prospective Bidder to obtain commitments from MBE/WBE subcontractors sufficient to meet the MBE/WBE goals after having made a diligent, good faith effort to do so.

C. Supporting Documentation Required from Potential Construction Bidders

1. A list of all items of work under the Contract that the Bidder made available for subcontracting to MBE/WBEs. The Bidder shall identify all items of work, other than work to be performed by filed sub-Bidders, that the Bidder did not make so available and shall state the reasons for not making such work available for subcontracting to MBE/WBEs. The Bidder shall also demonstrate that, where commercially reasonable, subcontracts were divided into scopes or tasks capable of being performed by MBE/WBEs.
2. Documentation that the Bidder sent written notices soliciting Bids or proposals to perform the items of work made available by the Bidder for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The Bidder shall identify (i) each MBE/WBE solicited, and (ii) each

¹ See Model Bidding Instructions
See Model Contract Instructions

MBE/WBE listed in the SDO directory under the applicable trade category that was not solicited and reasons therefore. The Bidder shall also state the date that notices were mailed and provide a copy of the written notice(s) sent.

Documentation that the Bidder made reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted.

3. A statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a bid or proposal.
4. Documentation of reasonable efforts, if any, made to assist MBE/WBEs that needed assistance in obtaining bonding or insurance, or lines of credit with suppliers if the inability of MBE/WBEs to obtain bonding, insurance, or lines of credit is the reason given for the Bidder's inability to meet the MBE/WBE goals.
5. The Bidder may also submit any other information supporting its request for a waiver or reduction in the MBE/WBE participation goals, including without limitation evidence that the Bidder placed advertisements in appropriate media and trade association publications announcing the Bidder's interest in obtaining bids or proposals from MBE/WBEs, and/or sent written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the Contract and the work to be subcontracted by the Bidder to MBE/WBEs. The Bidder shall also submit any other information reasonably requested by the Awarding Authority to show that the Bidder has taken all actions that could reasonably be expected to achieve the MBE/WBE participation goals.

D. Process for Requesting Waiver/Reduction of Construction Goals

1. Requests from prospective general Bidders to reduce or waive the MBE/WBE participation goals for the Contract must be received by the Awarding Authority no later than ten (10) working days before the general bids are due.
2. The Awarding Authority shall not consider any request to reduce or waive the MBE/WBE Participation goals for the Contract that is received after the aforementioned deadlines. Any reduction or waiver of the MBE/WBE participation goals for the Contract will be made by written addendum mailed to all persons who have taken out plans for the project within a reasonable period prior to bid submission.
3. Procedures and Timelines for the Waiver/Reduction of Construction Goals can be found in the attached Model Bidding Instructions.